

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KANURI S. QAWI,

No. C 09-1038 SI (pr)

Petitioner,

ORDER OF DISMISSAL

v.

GREG AHERN, Sheriff,

Respondent.

Petitioner, an inmate at the Alameda County Jail, has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. In his petition, he alleges that he was subjected to excessive force.

The petition does not attempt to challenge either the fact or length of petitioner's detention. Success in this action would not result in his release or any change in any sentence imposed on him. Where, as here, a successful challenge to a jail condition or to action by an outside party will not necessarily shorten the term of the person's custody, a civil rights action under 42 U.S.C. § 1983 is proper and habeas jurisdiction is absent. See Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003); see also Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action proper method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition because challenges to terms and conditions of confinement must be brought as civil rights complaint).

Although a district court may construe a habeas petition by an inmate attacking the conditions of his confinement or some other condition that he contends violates his constitutional rights as pleading civil rights claims under 42 U.S.C. § 1983, see Wilwording v. Swenson, 404


1 U.S. 249, 251 (1971), the court declines to do so here. The difficulty with construing a habeas
2 petition as a civil rights complaint is that the two forms used by most inmates request different
3 information and much of the information necessary for a civil rights complaint is not included
4 in the form habeas petition filed here. Examples of the potential problems created by using the
5 habeas petition form rather than the civil rights complaint form include the omission of intended
6 defendants, failure to link each defendant to the claims, and absence of an adequate prayer for
7 relief. Additionally, there is doubt whether the petitioner is willing to pay the civil action filing
8 fee of \$350.00 rather than the \$5.00 habeas filing fee to pursue his claims. The habeas versus
9 civil rights distinction is not just a matter of using different pleading forms. A habeas action
10 differs in many ways from a civil rights action: (1) a habeas petitioner has no right to a jury trial
11 on his claims, (2) the court may be able to make credibility determinations based on the written
12 submissions of the parties in a habeas action, (3) state court (rather than administrative) remedies
13 must be exhausted for the claims in a habeas action, (4) the proper respondent in a habeas action
14 is the warden in charge of the jail/prison, but he or she might not be able to provide the desired
15 relief when the petitioner is complaining about a condition of confinement or an event unrelated
16 to the jail or prison, and (5) damages cannot be awarded in a habeas action. While a petitioner
17 may think he has found a loophole that allows him to save \$345.00 – by filing a habeas petition
18 with a \$5.00 fee rather than the usual \$350.00 fee for a civil action – the loophole proves
19 unhelpful because he ultimately cannot proceed in habeas and will be charged the \$350.00 filing
20 fee. It is not in the interest of judicial economy to allow inmates to file civil rights actions on
21 habeas forms because virtually every such case, including this one, will be defective at the outset
22 and require additional court resources to deal with the problems created by the different filing
23 fees and the absence of information on the habeas form.

24 For the foregoing reasons, this action for a writ of habeas corpus is **DISMISSED** without
25 prejudice to petitioner filing a civil rights action under 42 U.S.C. § 1983, preferably using the
26 court's civil rights complaint form. The court has not determined whether there would be a
27 viable claim for relief even if the claim was presented in a civil rights complaint. The in forma
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1 pauperis application is DENIED because it is incomplete in that petitioner did not submit the
2 required certificate of funds and copy of his inmate trust account statement. (Docket # 3.) The
3 clerk shall close the file.

4 IT IS SO ORDERED.

5 DATED: June 11, 2009



SUSAN ILLSTON
United States District Judge